COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WAL-MART STORES #01-2128	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF HALIFAX**
Docket Nos. F337282 X309003		Promulgated: November 16, 2023

These are appeals originally filed under the Informal Procedure[1] pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Halifax ("appellee" or "assessors") to abate taxes on certain real estate in Halifax owned by and assessed to Wal-Mart Stores #01-2128 ("Wal-Mart" or "appellant") for fiscal years 2019 and 2020 ("fiscal years at issue").

Commissioner Elliott heard these appeals. Chairman DeFrancisco and Commissioners Good and Metzer joined him in the decisions for the appellant.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Bruce J. Stavitsky, Esq., and *Jaclene Troisi,* Esq., for the appellant.

John R. Hucksam, Esq., for the appellee.

1 Within thirty days of service of the Statement Under Informal Procedure, the assessors elected to transfer the proceedings for fiscal year 2019 to the formal docket. *See* G.L. c. 58A, § 7A. The assessors did not elect to transfer the proceedings for fiscal year 2020, but the Appellate Tax Board ("Board") heard both appeals together.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered into evidence at the hearing of these appeals, the Board made the following findings of fact.

I. Introduction and Jurisdiction

On January 1, 2018, and January 1, 2019, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of a 24.59-acre parcel of land in Halifax improved with a 96,884 square-foot retail building (the building alone shall hereafter be referred to as "the subject building," but together with the land, as "the subject property").

The subject building was constructed in 1997 and has been operated as a Wal-Mart retail store since that time. It is a single-story building with a reinforced concrete foundation, steel frame and concrete block exterior, topped with a flat, membrane roof. Interior finishes include painted sheetrock walls, ceramic tile floors, and LED light fixtures. There are adequate restroom, sprinkler, and HVAC systems in place, and the subject building is considered to be in overall good condition.

For fiscal year 2019, the assessors valued the subject property at $9,275,200, and assessed a tax thereon, at the rate of $17.47 per thousand, in the total amount of $162,034.25. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On October 9, 2018, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the assessors denied on January 9, 2019. On January 11, 2019, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board.

For fiscal year 2020, the assessors valued the subject property at $9,484,900 and assessed a tax thereon, at the rate of $17.44 per thousand, in the total amount of $165,416.66. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On October 23, 2019, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the assessors denied on December 18, 2019. In accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed its appeal with the Board on January 7, 2020.

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

II. The Appellant's Case

The appellant presented its case primarily through the testimony and appraisal report of Matthew Pattison, a certified general real estate appraiser, whom the Board qualified as an expert witness in real estate valuation. After determining that the subject property's highest and best use was its continued use as a retail property, Mr. Pattison considered the three usual valuation methods – the cost approach, income-capitalization approach, and the sale comparison approach - for determining the fair market value of the subject property for the fiscal years at issue. Mr. Pattison ultimately selected the income-capitalization approach as the most reliable methodology to use to determine the fair market value of the subject property.

The first step in Mr. Pattison's income-capitalization analysis was to determine the subject property's potential gross revenue for each of the fiscal years at issue. To accomplish this step, Mr. Pattison researched and relied on four purportedly comparable retail leases. Relevant information regarding Mr. Pattison's selected leases appears in the following table:

No.	Address	Tenant	Square Feet	Lease Date	Base Rent PSF	Terms	Summarized Comments
1	1110 Fall River Ave., Seekonk	At Home	107,927	04/2017	$4.00	Triple Net	Shorter than typical lease term, upward adjustment
2	10 Pilgrim Hill Rd., Plymouth	Grossman's Bargain Outlet	25,850	07/2019	$7.00	Modified Gross	NNN equivalent rent of $5.50-$6.00 psf; downward adjustments for location
3	105 Long Pond Rd., Plymouth	Big Lots	38,407	09/2015	$7.75	Triple Net	Downward adjustments for location and size
4	150 Highland Ave., Seekonk	Ocean State Job Lot	24,602	02,2015	$8.07	Modified Gross	Downward adjustments for location, size, and expense structure

Based on his analysis, Mr. Pattison determined that a stabilized fair market rent of $5.50 per square foot on a triple net basis was appropriate for the subject property for both fiscal years at issue. Applying this rate to the subject building's 96,884 square feet, Mr. Pattison obtained a potential gross income of $532,862 for each of the fiscal years at issue.

The next step in Mr. Pattison's analysis was the determination of vacancy and collection loss allowances. He consulted industry sources for vacancy and availability data, including information published by *CoStar* and *KeyPoint*. Mr. Pattison determined a stabilized vacancy and collection loss rate of 7.5 percent for fiscal year 2019 and 8.0 percent for fiscal year 2020, which resulted in effective gross incomes for those fiscal years of $492,897 and $490,233, respectively.

Next, Mr. Pattison determined the subject property's net operating income for the fiscal years at issue by deducting expenses. Mr. Pattison allowed the following expenses: property management, calculated at 1.5 percent of effective gross income, and replacement reserves, calculated at $0.25 per square foot. The total expenses amounted to $31,614 for fiscal year 2019 and $31,574 for fiscal year 2020. Deducting these expenses resulted in net operating incomes of $461,283 for fiscal year 2019 and $458,659 for fiscal year 2020.

The final step in Mr. Pattison's income-capitalization analysis was the determination of a capitalization rate. To derive his capitalization rate, Mr. Pattison consulted market surveys, including the *PricewaterhouseCoopers Korpacz Report* and *Real Capital Analytics* for the fourth quarters of 2017 and 2018. These sources indicated rates ranging from a low of 4.0 percent to a high of 9.5 percent. Mr. Pattison also employed a band-of-investment analysis, which resulted in an indicated capitalization rate of 7.5 percent. Based on all this information, Mr. Pattison settled on a base capitalization rate of 7.5 percent, which he then loaded with pro-rated tax factors, reflective of his assumption of a 7.5 percent vacancy and collection loss rate, to derive overall capitalization rates of 7.631 percent for fiscal year 2019 and 7.640 percent for fiscal year 2020.

After applying these capitalization rates to his determined net operating incomes, Mr. Pattison ultimately determined final, rounded fair market values for the subject property of $6,045,000 for fiscal year 2019 and $6,003,000 for fiscal year 2020.

III. The Appellee’s Case

In support of their assessments, the assessors relied on the testimony and appraisal report of Thomas Jensen, a certified general real estate appraiser, whom the Board qualified as an expert witness in real estate valuation. Mr. Jensen first determined that the highest and best use of the subject property was its continued current use as a retail property. To ascertain a fair market value for the subject property, Mr. Jensen conducted both a sales-comparison analysis and an income-capitalization analysis. However, he ultimately relied on the values determined through his income-capitalization approach, as in his opinion it was the most suitable method with which to determine the subject property’s fair market value.

To begin his income-capitalization analysis, Mr. Jensen selected purportedly comparable leases from which to determine a fair market rent for the subject property. Information regarding his chosen lease comparison properties is contained in the following table:

	Tenant	Address	Square Feet	Rent PSF	Date Term
1	Burlington Coat Factory	200 Westgate Dr., Brockton	43,248	$12.00	10/2018
2	TJ Maxx/Home Goods	120-140 Pearl St., Braintree	43,084	$15.00	6/2018
3	Homesense	125-199 University Ave., Westwood	24,000	$22.25	11/2017
4	BJ'S Wholesale	100 Corporate Dr., Franklin	108,510	$10.40	4/2017
5	PetSmart	270 New State Hghwy., Raynham	14,000	$16.00	4/2015

Mr. Jensen made various adjustments to these lease comparison properties to account for differences from the subject property for such factors as location/access, surrounding retail businesses, market conditions, and area demographics. After making these adjustments, his lease comparison properties had rents ranging from $10.40 to $22.25 per square foot. Mr. Jensen ultimately selected a fair market rent for the subject property of $8.00 per square foot, which he used for both fiscal years at issue, resulting in a potential gross income of $775,072. Mr. Jensen then determined an appropriate vacancy and collection loss rate of 5.0 percent, resulting in an effective gross income of $736,318.

With respect to operating expenses, Mr. Jensen assumed triple-net lease terms, and therefore allotted expenses for a management fee, in the amount of 2.5 percent of effective gross income, and a replacement reserve in the amount of $0.25/per square foot. After deducting these expenses, which totaled $42,629, from his calculated effective gross income, Mr. Jensen arrived at a net-operating income of $693,689.

The final step in his income-capitalization analysis was the selection of an appropriate capitalization rate. To determine a capitalization rate, Mr. Jensen reviewed rates published by the *PricewaterhouseCoopers Korpacz Report* for the first Quarters of 2018 and 2019, which indicated capitalization rates ranging from 5.0 to 8.5 percent for the subject property's category. Mr. Jensen also extracted capitalization rates from the sale terms of three local property sales similar to the subject property which occurred between 2014 and 2019. These sales indicated capitalization rates ranging from 6.0 to 6.22 percent, with an average of 6.09 percent. Additionally, Mr. Jensen performed a band-of-investment analysis, which yielded an indicated capitalization rate of 6.75 percent. Ultimately, based on all of these sources, Mr. Jensen selected a capitalization rate of 6.75 percent for fiscal year 2019 and a capitalization rate of 6.9 percent for fiscal year 2020.

To these selected base capitalization rates, Mr. Jensen added appropriate tax factors to reflect his conclusion of a 5.0 percent vacancy rate, which resulted in final, loaded capitalization rates of 6.84 percent for fiscal year 2019 and 7.0 percent for fiscal year 2020. After applying these capitalization rates to his calculated net operating incomes, Mr. Jensen arrived at final, rounded opinions of fair market value for the subject property in the amounts of $10,100,000 for fiscal year 2019 and $10,000,000 for fiscal year 2020.

IV. The Board's Conclusions

On the basis of the record in its entirety, the Board found and ruled that the appellant met its burden of proving that the subject property was overvalued for both of the fiscal years at issue. In reaching this conclusion, the Board agreed with both parties' valuation experts that the highest and best use of the subject property was its continued use as a retail property for both fiscal years at issue. The Board likewise agreed with both parties' valuation experts that the income-capitalization approach was the most reliable method to determine the subject property's fair market value.

After reviewing the leases offered into the record by both parties, the Board selected a fair market rent for the subject property of $6.50 per square foot for both fiscal years at issue. This rent resulted in a potential gross income of $629,746. The Board adopted Mr. Jensen's selected vacancy rate and collection loss rate of 5.0 percent, as it was more supported by both the evidence in the record as well as the subject property's actual operating history. Applying this rate resulted in an effective gross income of $598,259.

With respect to operating expenses, both parties utilized a replacement reserve figure of $0.25 per foot. The Board found that figure to be reasonable, and it therefore adopted that amount. With respect to a management fee, Mr. Pattison utilized a 1.5 percent fee while Mr. Jensen selected a rate of 2.5 percent. The Board adopted a rate of 2.0 percent, which it found to be reasonable given the subject property's most likely use as a single-tenant property. After deducting these expenses, the Board determined a net operating income of $593,560.

With respect to capitalization rates, there was little difference between the parties' valuation experts, with Mr. Pattison selecting a base rate of 7.5 percent while Mr. Jensen selected base rates of 6.75 percent and 6.9 percent. The Board found this range of rates to be reasonable and supported by the record, and ultimately selected a base capitalization rate of 7.25 percent for both fiscal years at issue. The Board then added to this base rate appropriate tax factors for each fiscal year to reflect its conclusion of a 5.0 percent vacancy rate. This resulted in a final, loaded capitalization rate of 7.34 percent for both fiscal years. After applying that rate to its concluded net operating income, the Board determined a rounded fair market value for the subject property of $8,100,000 for both fiscal years at issue.

Based on the foregoing findings, the Board issued decisions for the appellant in both appeals, and granted abatements in the amount of $20,530.74 for fiscal year 2019 and $24,152.66 for fiscal year 2020.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston,*** 334 Mass. 549, 566 (1956); ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). A taxpayer has the burden of proving that the property at issue has a lower value than its assessed value. ***Boston Gas Co.,*** 334 Mass. 549 at 566.

In determining fair cash value, all uses to which the property was or could reasonably be adapted on the relevant assessment dates should be considered. ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). The goal is to ascertain the maximum value of the property for any legitimate and reasonable use. If the property is particularly well-suited for a certain use that is not prohibited, then that use may be factored into determining its fair market value. ***Colonial Acres, Inc. v. Assessors of North Reading***, 3 Mass. App. Ct. 384, 386 (1975). "In determining the property's highest and best use, consideration should be given to the purpose for which the property is adapted." ***Peterson v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2002-573, 617 (citing APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 305-308 (12th ed., 2001)), *aff'd*, *in relevant part*, 62 Mass. App. Ct. 428 (2004). In the present appeals, the Board agreed with the parties' real estate valuation experts that the subject property's highest and best use was its continued use as a retail property.

Generally, real estate valuation experts, Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redevelopment Auth.,*** 375 Mass. 360, 362 (1978). "The board is not required to adopt any particular method of valuation." ***Pepsi-Cola Bottling Co. v. Assessors of Boston,*** 397 Mass. 447, 449 (1986). The use of the income-capitalization approach is appropriate when reliable market-sales data are not available. ***Assessors of Weymouth v. Tammy Brook Co.,*** 368 Mass. 810, 811 (1975); ***Assessors of Lynnfield v. New England Oyster House,*** 362 Mass. 696, 701-02 (1972). It is also recognized as an appropriate technique to use for valuing income-producing property. ***Taunton Redev. Assocs. v.***

Assessors of Taunton, 393 Mass. 293, 295 (1984). In these appeals, the Board agreed with both parties' real estate valuation experts that the income-capitalization approach was the most appropriate method to value the subject property.

"The direct capitalization of income method analyzes the property's capacity to generate income over a one-year period and converts the capacity into an indication of fair cash value by capitalizing the income at a rate determined to be appropriate for the investment risk involved." ***Olympia & York State St. Co. v. Bd. Of Assessors,*** 428 Mass. 236, 239 (1998). "It is the net income that a property *should* be earning, not necessarily what it actually earns, that is the figure that should be capitalized." ***Peterson v. Assessors of Boston***, 62 Mass. App. Ct. 428, 436 (2004) (emphasis in original). Accordingly, the income stream used in the income-capitalization method must reflect the property's earning capacity or economic rental value. ***Pepsi-Cola Bottling Co.,*** 397 Mass. at 452.

Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity. *See* ***Correia v. New Bedford Redevelopment Auth.***, 5 Mass. App. Ct. 289, 293-94 (1977), *aff'd on other grounds,* 375 Mass. 360 (1978); ***Library Services, Inc. v. Malden Redevelopment Auth.***, 9 Mass. App. Ct. 877, 878 (1980) (rescript). Vacancy rates must also be market based when determining fair cash value. ***Olympia & York State St. Co. v. Bd. Of Assessors,*** 428 Mass. at 239. After accounting for vacancy and rent losses, net operating income is obtained by deducting the landlord's appropriate expenses. ***General Electric Co. v. Assessors of Lynn,*** 393 Mass. 591, 610 (1984). The expenses should also reflect the market. *See* ***Olympia & York State St. Co.***, 428 Mass. at 239. Lastly, the capitalization rate selected should consider the return necessary to attract investment capital. ***Taunton Redev. Assocs.,*** 393 Mass. at 295.

In reaching its opinion of fair market value in these appeals, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert witness suggested. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. ***Foxboro Assocs. v. Assessors of Foxborough,*** 385 Mass. 679, 683 (1982); ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 473 (1981); ***New England Oyster House,*** 362 Mass. at 702. In evaluating the evidence before it, the Board selected among the various elements of value and appropriately formed its own independent judgment of fair cash value. ***General Electric Co.,*** 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn,*** 392 Mass. 296, 300 (1984).

Based on all of the evidence presented in these appeals, and reasonable inferences drawn therefrom, the Board found and ruled that the appellant met its burden of demonstrating that the subject property's assessed value exceeded its fair market value for both of the fiscal years at issue. Relying on the information contained in the record, and after exercising its own independent judgment, the Board ultimately determined fair market values for the subject property of $8,100,000 for both fiscal years at issue. Accordingly, the Board issued decisions for the appellant in these appeals and granted an abatement in the amount of $20,530.74 for fiscal year 2019 and $24,152.66 for fiscal year 2020.

THE APPELLATE TAX BOARD

By: /S/ *Mark J. DeFrancisco*
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /S/ *William J. Doherty*
Clerk of the Board